

Message Text

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TO AMEMBASSY PORT AU PRINCE

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E.O. 11652: N/A

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SUBJ: PLAN TO REQUEST UNHCR TO PROVIDE ADVISORY
OPINIONS TO THE DEPARTMENT ON REQUESTS FOR ASYLUM IN U.S.
BY HAITIAN NATIONALS

1. DEPARTMENT HAS UNDER SERIOUS CONSIDERATION A PLAN TO
REQUEST THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES TO FURNISH ADVISORY OPINIONS TO THE DEPARTMENT,
ON A CASE BY CASE BASIS, ON REQUESTS FOR ASYLUM BY HAITIAN
NATIONALS IN U.S. THIS ACTION CONTEMPLATED TO DEFUSE THE
CONTROVERSIAL ISSUE OF REQUESTS FOR POLITICAL ASYLUM BY
HAITIANS. UNHCR IS CHARGED BY HIS MANDATE FROM UN GENERAL
ASSEMBLY WITH RESPONSIBILITY FOR THE INTERNATIONAL PRO-
TECTION OF REFUGEES.

2. AS EMBASSY AWARE, ADJUDICATION OF REQUESTS FOR ASYLUM
MADE WITHIN THE U.S. AND THE QUESTIONS OF EXCLUSION AND
DEPORTATION FROM THE U.S. ARE MATTERS WHICH LIE WITHIN
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JURISDICTION OF ATTORNEY GENERAL. UNDER PROCEDURES WHICH

HAVE BEEN IN EFFECT FOR SEVERAL YEARS WITH RESPECT TO ALL APPLICANTS FOR ASYLUM (WHETHER HAITIANS OR OTHERWISE) THE IMMIGRATION AND NATURALIZATION SERVICE, IF IT DETERMINES A CLEAR AND PERSUASIVE CASE HAS BEEN MADE FOR ASYLUM, APPROVES THE APPLICATION WITHOUT REFERRING IT TO DEPARTMENT. IF, HOWEVER, INS DOES NOT BELIEVE A CONVINCING CASE FOR ASYLUM HAS BEEN MADE OR IF THE CLAIM FOR ASYLUM IS CONSIDERED QUESTIONABLE, THE MATTER IS REFERRED BY INS TO DEPARTMENT FOR ADVISORY OPINION BY LATTER. THE FILE THUS REFERRED GENERALLY CONSISTS OF WRITTEN APPLICATION FOR ASYLUM ON FORM I-589, ALL SUPPORTING DATA SUBMITTED BY APPLICANT, AND COPIES OF ALL DATA CONNECTED WITH THE EXAMINATION OF REQUESTS FOR ASYLUM INCLUDING TRANSCRIPT OF ANY INTERROGATION OF APPLICANT BY INS INVESTIGATING OFFICER. AFTER DEPARTMENT HAS REACHED ITS ADVISORY OPINION AND COMMUNICATED IT TO INS, THE LATTER MAKES FINAL DETERMINATION AS TO WHETHER OR NOT ASYLUM SHOULD BE GRANTED.

3. UNDER PLAN BEING CONSIDERED BY DEPARTMENT UNHCR WOULD BE REQUESTED TO PROVIDE TO DEPARTMENT, ON INDIVIDUAL CASE BASIS, UNHCR ADVISORY OPINION ON REQUESTS FOR ASYLUM FROM HAITIAN NATIONALS WHICH HAVE BEEN REFERRED TO THE DEPARTMENT OF STATE BY INS. UNDER ENVISAGED PROCEDURE DEPARTMENT WOULD SUBMIT SUCH CASES DIRECTLY TO UNHCR PRIOR TO CONDUCTING ITS OWN REVIEW OF THESE CASES. WE WOULD ALSO SUPPLY BACKGROUND INFORMATION TO THE EXTENT PERMITTED BY OUR LAWS AND REGULATIONS. UPON RECEIPT OF UNHCR ADVISORY OPINION ON ANY PARTICULAR CASE THE DEPARTMENT WOULD TAKE THIS FULLY INTO ACCOUNT IN REACHING ITS OWN DECISION AS TO ITS ADVISORY OPINION TO BE COMMUNICATED TO INS. HOWEVER, DEPARTMENT WOULD NOT REPEAT NOT CONSIDER ITSELF NECESSARILY BOUND BY UNHCR ADVISORY OPINION AND WOULD RETAIN ITS INDEPENDANT JUDGEMENT IN FORMULATING ITS OWN ADVISORY OPINION TO INS.

4. SUCH UNHCR PARTICIPATION IN PROCESSING REQUESTS FOR ASYLUM HAS AMPLE PRECEDENT. UNHCR HAS ROLE WITH NUMBER OF GOVERNMENTS IN WEST EUROPE AND ELSEWHERE FOR TAKING PART IN ASYLUM PROCEDURE, RANGING FROM FURNISHING ADVISORY OPINIONS TO PARTICIPATION AS VOTING MEMBER ON BOARDS FOR DECIDING ASYLUM REQUESTS. IN CASE OF BELGIUM LIMITED OFFICIAL USE

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UNHCR BY EXECUTIVE DECREE OF GOB IS EMPOWERED ITSELF TO MAKE ASYLUM DECISIONS.

5. DEPARTMENT REQUESTS COMMENTS OF EMBASSY ON PROPOSED PLAN AS SET FORTH ABOVE. WITHOUT DISCUSSING MATTER WITH GOH PLEASE INDICATE EMBASSY JUDGEMENT AS TO WHAT REACTION GOH WOULD HAVE IF THIS PLAN IS IMPLEMENTED. ROBINSON

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